

### **Remarks**

Claims 1 – 9 remain in the present application.

### **Rejections under 35 U.S.C. 102**

Claims 8-9 were rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent 6,787,603.

In the reasons for the rejection, the Office acknowledges;

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention “by another,” or by an appropriate showing under 37 CFR 1.131.

Applicant submits herein a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application, and therefore is not the invention “by another”.

### **Obviousness-type Double Patenting Rejection**

Claims 1 - 6 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 to 7 of U. S. Patent No. 6,787,603.

Claims 1 to 6 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 to 11 and 19-20 of co-pending Application No. 10/552,537.

Applicant re-submits herein terminal disclaimers in compliance with 37 CFR 1.32(c) or 1.321(d) to overcome these rejections.

In the 01/29/2010 office action, the previously filed terminal disclaimers were considered disapproved asserting that the “attorney is not of record”.

Applicant believes the terminal disclaimers were proper, and the present agent is of record as evidenced by the official record in the USPTO’s **Patent Application Information Retrieval** system.

The present response is being submitted within the six month statutory period for response to the outstanding Office Action. Applicant authorizes the USPTO to charge deposit account 04-1520 for a one month extension and any additional fees that should be necessary to maintain the pendency of the application.

In view of the above, it is respectfully submitted that the claims are in condition for allowance. Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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